

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

JUDGMENT

Bhoor Singh & Anr. vs. The State of Rajasthan

1. D.B.Cri. Appeal No.391/1984

Under Section 374 (2) Cr.P.C.
against the judgment dated 09.11.84 passed
by the Additional Sessions Judge, Udaipur
in Sessions Case No. 65/1983.

Date of Judgment:

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01st October, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr. Doongar Singh for the appellants.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal has been filed by the two accused appellants Bhoora and Babu being aggrieved by the decision of the court of Addl. Sessions Judge , Udaipur in Sessions Case No.65/1983 dated 09th November, 1984.

Both the accused appellants have been convicted under section 302 IPC. Accused Bhoora has been convicted under section

302 IPC and has been sentenced to life imprisonment and a fine of Rs. 1,000/- and accused Dhula has been convicted under section 302/34 and sentenced to life imprisonment and a fine of Rs. 1000/-.

The prosecution was initiated on the basis of a report lodged at police station Pahada where a written report was submitted on 30.03.83 at about 03.00 PM alleging inter alia that 16 persons gathered at the house of Dhula. They were armed with axe, bow and arrow and sticks. They caused injuries to Dhula and Rupsi. In the incident Rupsi expired on 04.04.83 and the post mortem was conducted on 05.04.83.

According to the prosecution, the incident is alleged to have occurred on 03.04.83 at about 03.00 PM and in that incident 16 persons participated. Out of these 16 persons, the prosecution filed charge sheet against 6 persons and out of the 6 persons, only 2 namely , Bhoora and Babu @ Babu Lal have been convicted. Thus, we see that out of the 16 accused, only 2 have been held guilty. The death has occurred on 04.04.83 and not immediately after the incident.

Learned counsel for the appellants has not disputed the

occurrence but have canvassed that the offence under Section 302 IPC cannot be said to be made out.

The weapon of offence as alleged were bows and arrows and axe. But specification of the injury was not possible. 16 persons are said to have caused the assault, out of which only 6 were selected by the prosecution for being sent to the trial and out of these 6, 2 have been convicted by the trial court. The death has not occurred immediately. There are only 8 injuries to the deceased Rupsi. According to the prosecution case Rupsi was not the target and it was Dhula who was to be assaulted. Injuries were inflicted to other complainants but Rupsi was not their target. Therefore, offence under section 302 IPC cannot be said to be made out. The accused appellants have suffered roughly 7 years inside the jail and thus, if the court pleases, their case can be considered to be converted for conviction under section 304-II IPC because it was on the spur of the moment that the incident had occurred. 16 persons were collected in the house of Dhula. He was the prime target. The deceased Rupsi was not the prime target. He sustained injuries and succumbed to that and, therefore, the conviction of accused under section 302 IPC is not sustainable.

The learned public prosecutor submitted that it would not be correct to say that the accused have not been rightly convicted by the trial court. They, along with others, armed with deadly weapons, went to the house of Dhula and Dhula was their target and Rupsi has been killed and the intention of the accused was writ large, otherwise he would not have been killed. It is proved that offence under section 302 IPC is made out because Rupsi has died. In that view of the matter, the conviction of the accused has rightly been recorded by the trial court.

We have heard the learned counsel and have given our thoughtful consideration to the material available on record.

Initially the case was that there were 16 persons and out of these 16 persons, 6 have been charge-sheeted and out of 6, 4 have been acquitted and 2 have been convicted. The incident, as has been narrated, only suggest that the group of people wanted to do something to Dhula and Rupsi was not the target. Both the parties were enraged. It is a case of an open fight between 2 groups. It is on a provocation that the incident has occurred. Therefore, we would convert the offence from under section 302 IPC to one under section 304 -II IPC. The accused are said to have remained behind the bars

for nearly seven years and in our opinion, the period already undergone would be a just period to meet the ends of justice.

Consequently, the appeal is partly allowed. The conviction of the accused appellants under section 302 IPC is set aside and instead they are convicted under section 304-II IPC. Their substantive sentence is reduced to the period already undergone by them.

In the result , the appeal is partly allowed as indicated above. The accused are on bail, they need not surrender to their bail bonds. Their bail bonds are cancelled.

MUNISHWAR NATH BHANDARI), J.

(BHAGWATI PRASAD), J.